

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA**

CIVIL ACTION NUMBER 1:07-CV-00953

RYAN McFADYEN, et al.,

Plaintiffs,

v.

DUKE UNIVERSITY, et al.,

Defendants.

**RENEWED MOTION TO DISMISS
SECOND AMENDED COMPLAINT
BY “DUKE POLICE
DEFENDANTS”**

Pursuant to this Court’s Order of February 16, 2010 (Dkt. 135), Federal Rule of Civil Procedure 12(b)(6), and Local Rules 7.2 and 7.3, the “Duke Police Defendants” submit this renewed Motion to Dismiss all claims asserted against them in Plaintiffs’ Second Amended Complaint for failure to state a claim on which relief may be granted.

The bases for this Renewed Motion to Dismiss were presented in previous briefing to this Court and, pursuant to this Court’s Order, are incorporated herein by reference, as follows:

1. Motion to Dismiss Amended Complaint by “Duke Police Defendants” (Dkt. 49);
2. Memorandum in Support of Motion to Dismiss by “Duke Police Defendants” (Dkt. 50);

3. Reply Brief in Support of Motion to Dismiss by “Duke Police Defendants” (Dkt. 99); and

4. Joint Supplemental Brief of “Duke University Defendants,” “Duke SANE Defendants,” and “Duke Police Defendants” Regarding *Ashcroft v. Iqbal* (Dkt. 120).

The “Duke Police Defendants” also hereby move the Court, pursuant to Federal Rule of Civil Procedure 12(b)(6), and Local Rules 7.2 and 7.3, to dismiss all claims asserted against them in Count 41 of the Second Amended Complaint for failure to state a claim on which relief may be granted. The bases for dismissing Count 41 are presented in detail in the accompanying Supplemental Memorandum, which is being filed jointly on behalf of the “Duke University Defendants,” “Duke SANE Defendants,” and “Duke Police Defendants,” in accordance with this Court’s February 16, 2010 Order (Dkt. 135).

For the reasons set forth in the above-listed briefs, the “Duke Police Defendants” respectfully request that all of the claims asserted against them in the Second Amended Complaint be dismissed with prejudice. The “Duke Police Defendants” also renew their request that oral argument be scheduled on their Renewed Motion to Dismiss pursuant to Local Rule 7.3(c)(1).

Respectfully submitted, this 16th day of March, 2010.

/s/ Jamie S. Gorelick

Jamie S. Gorelick
District of Columbia Bar No. 101370
Wilmer Cutler Pickering Hale and Dorr LLP
1875 Pennsylvania Ave., N.W.
Washington, D.C. 20006
Telephone: (202) 663-6500
Facsimile: (202) 663-6363
Email: jamie.gorelick@wilmerhale.com

Counsel for Duke Police Defendants

/s/ J. Donald Cowan, Jr.

J. Donald Cowan, Jr.
N.C. State Bar No. 0968
Ellis & Winters LLP
333 N. Greene Street, Suite 200
Greensboro, N.C. 27401
Telephone: (336) 217-4193
Facsimile: (336) 217-4198
Email: don.cowan@elliswinters.com

CERTIFICATE OF SERVICE

I hereby certify that on March 16, 2010, I electronically filed the foregoing Renewed Motion to Dismiss Second Amended Complaint by the “Duke Police Defendants” with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Counsel for the Plaintiffs

Robert C. Ekstrand

Email: rce@ninthstreetlaw.com

Counsel for City of Durham and Edward Sarvis

Reginald B. Gillespie, Jr.

Email: rgillespie@faison-gillespie.com

Counsel for Patrick Baker, Steven Chalmers, Ronald Hodge, Lee Russ, Stephen Mihaich, Beverly Council, Jeff Lamb, Michael Ripberger, and Laird Evans

Patricia P. Kerner

Email: tricia.kerner@troutmansanders.com

D. Martin Warf

Email: martin.warf@troutmansanders.com

Hannah Gray Styron

Email: hannah.styron@troutmansanders.com

Counsel for James T. Soukup, Kammie Michael, David Addison, Richard D. Clayton

James B. Maxwell

Email: jmaxwell@mfbpa.com

Counsel for Mark Gottlieb

David William Long

Email: dwwlong@poynerspruill.com

Eric P. Stevens

Email: estevens@poyners.com

Counsel for Benjamin Himan

Henry W. Sappenfield

Email: hsappenfield@kennoncraver.com

Joel Miller Craig

Email: jcraig@kennoncraver.com

Counsel for DNA Security, Inc., Richard Clark

Kearns Davis

Email: kdavis@brookspierce.com

Robert James King, III

Email: rking@brookspierce.com

Clinton R. Pinyan

Email: cpinyan@brookspierce.com

Counsel for Brian Meehan

James Avery Roberts, III

Email: jimroberts@lewis-roberts.com

Paul R. Dickinson, Jr.

Email: pauldickinson@lewis-roberts.com

Linwood Wilson, pro se

Email: redacted

This 16th day of March 2010.

/s/ Jamie S. Gorelick
Jamie S. Gorelick

Attorney for Duke University Police
Department, Jeffrey O. Best, Phyllis Cooper,
Robert Dean, Joseph Fleming, William F.
Garber II, Leila Humphries, James Schwab,
Gary N. Smith, and Greg Stotsenberg